

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENE VERTLIEB and DEPARTMENT OF STATE,
Washington, DC

*Docket No. 00-269; Submitted on the Record;
Issued January 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

Appellant, a 54-year-old professor of military language studies, who taught Russian for the employing establishment in Garmisch, Germany, filed an emotional condition claim alleging that he experienced harassment and disparate treatment by supervisors from November 1987 to July 1991 and May 1994 to February 1997. He alleged that he sustained a coronary heart condition, hypertension, psychovegetative stress syndrome, and underwent a kidney operation as a result of the employment stress. Appellant worked intermittently and later stopped working from February 1997 to January 1998.

Appellant submitted detailed statements to document the events which, he alleged, occurred at work and medical evidence dated from November 1987 to January 1998 to further support his claim. He alleged that, between November 1987 and June 1989, his supervisors made false allegations that he had been unprepared for class and that he smelled of alcohol, which made him feel threatened and caused him stress. Appellant took sick leave from November 30 to December 18, 1987, during which time he claimed to have been diagnosed with a hypertonic stress condition and other heart-related disorders.

Appellant also alleged that, on July 3, 1989, he went to a female colleague's room after he heard her scream and saw his supervisor, Major John Carlson exiting her room with a pair of pliers and pieces of metal wire in his hands. He alleged that Major Carlson thereafter threatened him to prevent him from reporting the incident and continually harassed him until appellant was ultimately suspended without pay from July 11 to 17, 1989. Appellant alleged that such harassment led to stress and strain, aggravated his high blood pressure and caused him to take sick leave from July 17 to August 8, 1989. He further alleged that, in a later incident, Major Carlson illegally confined him to his office and as a result, he took sick leave from September 29 to October 6, 1989, due to increased job-related stress. Appellant also alleged that

his office was “ransacked” on October 10, 1989, under the direction of the employing establishment.

Appellant further alleged that he was ultimately granted sick leave, which had been previously denied, after he suffered a relapse of stenocardia. He also alleged that, on November 19, 1989, he received a proposed suspension without pay dated November 17, 1989. Appellant further alleged that in mid August 1990, the employing establishment attempted to assign him to training courses that he had already completed, until appellant provided documentation that he required medical treatment by his local physician.

Appellant further alleged that, from February 21 to March 1, 1991, Major Gerald Lechlitter, his new supervisor, induced stress on him daily by behaving in an unprofessional manner. He claimed that he took sick leave from March 4 to 31, 1991 as a result of stress. Appellant stated that, when he returned to work on April 1, 1991, he was informed that the administration would not extend his overseas tour. He indicated that he was forced to take sick leave until approximately July 18, 1991, after Major Lechlitter yelled at him for failing to complete a sign-out sheet for time spent in the library.

The Office of Workers’ Compensation Programs advised appellant and the employing establishment by letters dated February 2, 1998, to submit additional evidence regarding appellant’s claim for benefits.

In response, the Office received additional medical reports and disability certificates, a narrative statement from appellant dated February 25, 1998 and letters from the employing establishment.

In a March 24, 1998 letter, Lieutenant Colonel John Sharp, appellant’s supervisor from July 1996 until May 1997, responded to the Office on behalf of the employing establishment. He indicated that appellant had had no deadlines, quotas, overtime, intense assignments or required travel in his position, and that he had been generally able to perform required duties in accordance with expectations. Lieutenant Colonel Sharp also indicated that the decision not to extend appellant’s overseas tour was made in accordance with the Department of Defense (DOD) policy. He further indicated that appellant had had no conduct or discipline problems and that there was no record of disciplinary action or adverse personnel actions taken against him.

By decision dated April 22, 1998, the Office denied appellant’s claim on the grounds that he failed to demonstrate the presence of work-related occupational disease conditions as a result of his federal employment.

Appellant disagreed with the April 22, 1998 decision and requested a review of the written record by a representative of the Office on October 14, 1998.¹ In support of his claim, appellant submitted a statement dated August 10, 1998, copies of previously submitted medical

¹ Appellant requested an oral hearing of the April 22, 1998 decision on June 17, 1998. The Office informed appellant on August 19, 1998 that he might consider requesting a review of the written record instead, due to his location in Germany. He later made the request for review of the written record on October 14, 1998.

reports and a copy of his application for disability retirement with accompanying medical documentation.

In a letter received by the Office on October 19, 1998, appellant stated that his health condition did not improve during his period of sick leave from February 1997 to January 1998, and that the employing establishment continued to create artificial stress, which prevented his recovery. He alleged that, during his sick leave, the employing establishment eliminated his position; changed his sick leave to leave without pay; attempted to take his office; refused to renew his identification card; attempted to take away his housing and prevented him from using the American military banking system.

By decision dated May 4, 1999, the Office hearing representative affirmed the April 22, 1998 decision, finding that appellant had not submitted any rationalized medical evidence to support that his medical conditions were due to factors of his federal employment.

The Board finds that appellant has not sustained an emotional condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability, or specific condition for which compensation is claimed is causally related to the employment injury.³

To establish that he has sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his conditions; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.⁴

In the present case, appellant contends that he sustained an emotional condition and various physical conditions as a result of harassment and disparate treatment at work. The Board must initially review whether these allegations constitute covered factors of employment under the terms of the Act.

Workers' compensation law does not cover every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage of workers' compensation. These injuries occur in the course of employment and have some kind of causal

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Kathleen D. Walker*, 42 ECAB 603 (1991).

connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition, which will be covered under the Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, disability is not covered where it results from such factors as an employee's fear of a reduction-in-force and frustration from not being permitted to work in a particular environment or to hold a particular position.⁵ Disabling emotional conditions resulting from an employee's feelings of job insecurity or from the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.⁶

In the present case, appellant has alleged in part, that the employing establishment's actions of delaying sick leave requests; assigning training courses previously completed; suspending him without pay and determining that his overseas teaching position would not be extended caused the claimed conditions and disability. He also alleged that, during his period of disability, the employing establishment eliminated his position; changed his sick leave to leave without pay; attempted to take his office; refused to renew his identification card; attempted to take away his housing and prevented him from using the American military banking system. The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, and do not fall within the coverage of the Act.⁷ Although the handling of leave requests and similar matters are generally related to the employment, such are administrative functions of the employer and not duties of the employee.⁸ Nonetheless, error or abuse by the employing establishment supervisor in an administrative or personnel matter, or evidence that the supervisor acted unreasonably in the administration of a personnel matter, may afford coverage.⁹ However, there is no evidence of record in this case which establishes that any of appellant's supervisors acted unreasonably or committed error or abuse in the personnel matters discussed by appellant. It was an administrative decision not to extend appellant's overseas position and, according to the employing establishment, within DOD policy. Appellant did not provide any evidence that the employing establishment erred or acted in an abusive matter when conducting its administrative duties of later eliminating his position and those military benefits attached to the former teaching assignment. Although, he attempts to raise questions regarding the employing establishment's motivation in suspending him without pay from July 11 to 17, 1989, there is no evidence in this case that the employing establishment erred or acted abusively in this regard. Appellant failed to show that the employing establishment committed error or abuse in connection with these administrative matters, thus,

⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Lillian Cutler*, *supra* note 5.

⁷ See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁸ *Id.*

⁹ See *Joe E. Hendricks*, 43 ECAB 850 (1992); *Thomas D. McEuen*, *supra* note 5.

appellant has not established a compensable employment factor with respect to these matters under the Act.

Appellant also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹⁰ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹¹

In the present case, while appellant has detailed the events of harassment and disparate treatment, which he alleges occurred between November 1987 and July 1991 that caused the claimed conditions, the evidence does not support that appellant was treated in an abusive manner by supervisors of the employing establishment. Appellant alleged that the employing establishment made allegations regarding his being unprepared for class and smelling of alcohol, however there is no factual evidence to support that employing establishment supervisors made such allegations. The employing establishment indicated to the contrary, that appellant had been generally able to perform required duties in accordance with its expectations, and had no record of disciplinary action or adverse personnel actions taken against him. Appellant also alleged that he was threatened with retaliation by a supervisor, if he reported an incident that he witnessed involving the supervisor and a female colleague, although he submitted no factual evidence, such as witness statements, to support this allegation. He also alleged that his supervisor illegally confined him in his office, and that the employing establishment later ordered that his office be "ransacked;" however, appellant also failed to submit evidence supporting his claim. Appellant failed to submit any factual evidence whatsoever, identifying and supporting employment factors or incidents alleged to have caused or contributed to his conditions. Thus, appellant has not established that he sustained an emotional condition due to compensable factors of employment.

While appellant has argued that the employing establishment caused the claimed conditions and period of disability by performing the administrative functions previously outlined above, appellant has not established that such functions constituted error or abuse. Neither has he demonstrated harassment or threatened retaliation upon reporting a work incident, vandalism or illegal confinement by the employing establishment. Accordingly, appellant has not established that he sustained an emotional condition due to compensable factors of employment.¹² Thus, he has not established a claim for an employment-related emotional condition.

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² When an employee has asserted a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office then addresses the medical evidence to determine whether the employee sustained an injury due to the compensable work factor; see *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

The decision of the Office of Workers' Compensation Programs dated May 4, 1999 is hereby affirmed.

Dated, Washington, DC
January 4, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member